

Remarks/Arguments

The Examiner has rejected Claims 1-3, 5-8 and 10 under 35 U.S.C. 103 as obvious over a two page reference having a title "Business Wire IMS Health Strategic Technologies Launches SampleTrak, The First Web-Based Solution for Managing Prescription Drug Sampling". In addition to the Examiner's primary reference, the Examiner has also cited five more pages of material obtained from the internet pertaining to IMS Health and Inventive Health, Inc. (which is mentioned in an article entitled "Enterprise Handheld Applications – Cut Your Data Down to Size – The Unrelenting Need for Fresh Data – Fast – Is Driving the Increased Use of Handhelds"). The Examiner has made his rejections of the Claims final.

Having reviewed the previous Amendment and Response and the Examiner's last Office Action, applicants' attorney respectfully traverses the Examiner's position and requests that the finality of the last Office Action be withdrawn. The finality of the Office Action should be withdrawn because the Examiner has not responded to the valid points of the previous Response and has inaccurately interpreted the references which have been cited. Since the references are relatively short, applicants' attorney respectfully requests that the Examiner reconsider his position and reread the references, in particular as guided by the following remarks.

As a preliminary observation, the references cited by the Examiner are marketing material, i.e., press releases made to promote the products described therein. As such, these materials are not enabling in that they fail to describe the technology in a manner

which would permit a person normally skilled in the art to make and use the technology. Rather than describing the specific methods and apparatus used for achieving the technology described, the references merely describe the technology in terms of purportedly achieved and/or desired objectives. Notwithstanding that limitation, even if the references are considered enabling in all respects, there are certain features of the present invention as previously and presently claimed, that are simply not present in the references.

The Patentability of Claim 1

While the previously submitted Claim 1 was in applicant's attorney's view, improperly rejected, Claim 1 has been amended to further emphasize the patentability of the present invention over the references cited. Claim 1 recites a method for tracking and controlling the distribution of controlled articles from a central inventory of a pharmaceutical company that have been conveyed to a representative for sampling by means of electronic communication and data collection. The steps executed in Claim 1 allow the pharmaceutical company to preauthorize a specific sampling transaction by a distributing representative of the pharmaceutical company before the sampling transaction occurs. This differs from the stated objectives of the references cited which merely describe (i) tracking sampling transactions (a passive activity conducted after sampling transactions have occurred); (ii) checking for authorization for a doctor to receive samples (not necessarily conducted at the time of sample distribution or as an imminent precondition for sample distribution); and (iii) auditing the sampling

transactions that have been conducted (after distribution). Each of these functions differ significantly from preauthorizing a specific transaction, i.e., which is specifically described in terms of the representative's identification, the drug identification and amount and the distributee (e.g., doctor), as well as meeting the specific business logic that is applied (e.g., Is the specific representative entitled to operate in the specific area? Is the specific representative entitled to dispense samples of the specific drug of interest? Is the specific physician not only generally authorized to receive drug samples, but has the number of drug samples received by that physician exceeded a threshold amount?)

The transaction-specific data exchange occurring in accordance with the present invention as claimed in Claim 1, requires the sampling representative to enter all the required data before the transaction can occur. This data is then transmitted to the central server which then analyses it and approves or disapproves the transaction. If approval occurs, the transaction is enabled by sending the sampling representative an authorization code. These features are simply not disclosed in the references cited by the Examiner. More specifically, the following steps quoted from Claim 1 are not present in the references cited by the Examiner.

A) The representative sending a distribution request to a system server containing a statement describing "the contents of the packet of articles being distributed from the portion of the central inventory conveyed to the distributing representative."

B) "confirming the authority of the distributing representative to distribute the

packet”

- C) “confirming the authority of the distributee to receive the packet”
- D) “evaluating the distribution request for meeting specific business logic specified by the pharmaceutical company”
- E) “transmitting an authorization code to the distributing representative”
- F) “decrementing the packet’s contents from the local inventory and decrementing the packet’s contents from the central inventory”

Applicants’ attorney has reviewed the Examiner’s position with respect to the forgoing features and believes that the Examiner has misinterpreted the references or is in error with respect to finding the foregoing features in the references cited. More specifically, the Examiner states on page 2 of the Office Action in subsection 3, second paragraph, “The request comprising a representative identifier, a distributee identifier...”. The reference does not describe the request as including a distributee identifier. This has been inserted by the Examiner without basis. The reason the request does not identify the distributee in the reference is because “the request” is made by the representative to the drug company to send more samples to the representative, not to authorize a specific sampling transaction to a doctor.

On page 2 of the Office Action in that same paragraph extending over to page 3, the Examiner observes that SampleTrak enables pharmaceutical administrators to electronically validate a physician’s ability to receive samples. That may be so, however there is nothing in the reference that suggests pre- authorization of a sampling

transaction, instead, just maintaining a list of authorized physicians to which reference may be made upon the representative's own initiative.

On page 3 of the Office Action, at approximately line 8, the Examiner asserts that the reference states "confirming the authority of the distributing representative to distribute this packet ...". This language is simply not in the references, either literally or inherently.

Similarly, the Examiner states that the reference(s) contain the concept of confirming the distribution request for propriety, and deleting a description of the packet's contents from the local and the central inventory. Nowhere in the references is there any mention of a confirmation of a distribution request for propriety (meeting the business logic predefined criteria), nor any mention of the deleting of the packet's contents from a local inventory. Applicants' attorney requests the Examiner to identify the specific language in the references where the foregoing concepts are disclosed.

In rejecting Claim 6, the Examiner has misinterpreted the references in that none of them describe an authorization code which is sent to the sampling representative. Claim 6 goes to the further step of having the sampling representative transmit the authorization code back to the pharmaceutical company, another feature absent from the references.

In rejecting Claim 7, the Examiner admits that the references do not disclose the pharmaceutical company transmitting a corrective action message to the distributing representative. However, the Examiner proposes that because customer service is a desirable objective that such action would be obvious. Applicants' attorney respectfully

suggests that this conclusion is unwarranted, especially because the references do not even suggest preauthorization of the specific transaction being conveyed to a sampling representative at the time of sample distribution. Accordingly, the references do not provide a suitable context for transmitting a corrective action message to the distributing representative. The only mention of communication with the distributing representative is in the context of presenting an order for samples to be sent to the distributing representative by the pharmaceutical company.

In rejecting Claim 8, the Examiner infers from the general objective and marketing claim that the reference product SampleTrak provides companies with "a complete solution for meeting prescription drug marketing act final rules" is sufficient to teach the feature, of Claim 8, that the request is alternatively received from the remote distributing representative by means of electronic transmission of information entered on a sample disbursement form, (e.g., by fax). There is no description in the references that the systems therein describe operating in conjunction with forms.

For each and all the foregoing reasons, applicants' attorney respectfully requests the Examiner to withdraw the finality of the rejection and to allow Claim 1 to issue. The remaining Claims are dependent from Claim 1 and also, recite additional novel features of the present invention. Claims 11 through 20 have been added to recite additional novel features that are described in the specification but that were previously not claimed. Each of Claims 11 through 20 recite features that are not present in any of the references cited by the Examiner. Accordingly, applicants' attorney respectfully requests the allowance of the new claims due to the fact that they recite new features

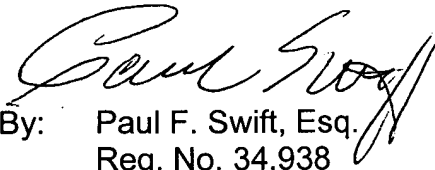
over and above the references and are dependent upon Claim 1.

It is believed an additional fee of \$225 for a two month extension is required attributable to this Amendment. Should there be any further fees required as a result of this Amendment the Examiner is authorized to charge Deposit Account No. 50-1402.

Applicant thanks the Examiner for his remarks in the Office Action mailed July 28, 2004 as has attempted to address the arguments raised in that Office Action. In view of the foregoing Amendments and remarks, reconsideration and allowance of the claims is respectfully requested. If the Examiner feels that it would be beneficial to discuss this response or any other matter with regards to this case, he is invited to contact the applicants' attorney at the number below.

Respectfully Submitted,

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